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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JUSTIN GREEN,

Defendant and Appellant.

A154840

(Humboldt County

Super. Ct. No. CR1704011)

Justin Green appeals from the trial court's victim restitution order. We affirm.

BACKGROUND

Appellant pled no contest to assault with a firearm (Pen. Code, § 245, subd. (a)(2)).¹ According to the preliminary hearing testimony, Rick Bustamante asked appellant and others camping in a turnout bordering his property to leave, and Bustamante and appellant began to argue. Appellant fired a rifle several times while pointing it away from Bustamante, then pointed the rifle at Bustamante, said “ ‘The next one is for you,’ ” and fired additional shots at Bustamante's feet. Appellant admitted to officers that he fired warning shots but only while the gun was pointed away from Bustamante.

The trial court suspended imposition of sentence and placed appellant on three years formal probation, reserving the issue of victim restitution. The People subsequently

¹ All undesignated section references are to the Penal Code.

moved for a restitution order of \$5,000 in attorney fees for a lawyer Bustamante retained to represent his interests in appellant's criminal case. At the restitution hearing, the attorney testified that after the preliminary hearing, when it looked like the case would go to trial, Bustamante paid her a \$5,000 retainer "to look after him during the trial." She testified that she performed "a tremendous amount of handholding," "explaining the process to him, explaining how it would go," and helping "broker a resolution towards probation," which Bustamante initially opposed. She also obtained a restraining order against a friend of appellant's who threw a rock at Bustamante. She estimated that, excluding time spent on the restraining order, she performed about 12 hours of work on this case.

The trial court found the attorney fees recoverable, noting Bustamante "felt he needed to receive help and -- to recover what were his rights as a victim." The court found the requested amount of \$5,000 "excessive and unreasonable" and awarded "a reasonable amount at \$2500."

DISCUSSION

Appellant argues, as he did below, that attorney fees are only recoverable as restitution when incurred to collect other economic losses. We disagree.

Section 1202.4 provides, with exceptions not relevant here: "in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court." (§ 1202.4, subd. (f); see also *People v. Brooks* (2018) 23 Cal.App.5th 932, 943 (*Brooks*) ["[V]ictim restitution rights derive from the Constitution, as amended through initiative. [Citation.] Section 1202.4 constitutes implementing legislation . . ."].) "[W]e review the trial court's restitution order for abuse of discretion." (*People v. Giordano* (2007) 42 Cal.4th 644, 663.)

Section 1202.4, subdivision (f)(3) includes a nonexclusive list of recoverable losses, including the value of stolen or damaged property, medical expenses, mental health counseling expenses, and lost wages or profits. "Because the statute uses the

language ‘including, but not limited to’ these enumerated losses, a trial court may compensate a victim for any economic loss which is proved to be the direct result of the defendant’s criminal behavior, even if not specifically enumerated in the statute.” (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1046.)

Appellant notes that the list of enumerated losses includes “[a]ctual and reasonable attorney’s fees and other costs of collection accrued by a private entity on behalf of the victim.” (§ 1202.4, subd. (f)(3)(H).) He argues that because the statute expressly includes attorney fees incurred as a cost of collection, it implicitly excludes attorney fees incurred for other purposes. Similar arguments have been squarely rejected. In *Brooks*, the defendant was found guilty of residential burglary and ordered to pay victim restitution “for a burglar alarm and new door locks.” (*Brooks, supra*, 23 Cal.App.5th at p. 935.) He argued the restitution was unauthorized because the list of enumerated losses includes expenses for residential security “ ‘incurred related to a violent felony,’ ” impliedly precluding restitution for such expenses when incurred related to a nonviolent felony. (*Id.* at p. 941 [quoting § 1202.4, subd. (f)(3)(J)].) The court rejected the contention, finding the recoverable losses enumerated in the statute “are not intended to define a victim’s substantive right to restitution, but to ensure those rights will be fully vindicated by identifying common types of restitution and providing guidance for calculating the proper measure of damages. In other words, subdivision (f)(3)(J) must be construed to set a floor, not a ceiling. The provision should not be interpreted to impliedly limit—or vitiate—victims’ constitutional rights.” (*Id.* at p. 944.)

Similarly, in *People v. Crisler* (2008) 165 Cal.App.4th 1503 (*Crisler*), the defendant was ordered to pay restitution to the murder victim’s parents “for lost wages, mileage, and parking fees incurred while attending the 15–day murder trial.” (*Id.* at pp. 1505–1506.) He challenged the order, arguing that “one of the enumerated categories, section 1202.4, subdivision (f)(3)(E), specifically provides for lost wages ‘due to time spent as a witness or in assisting the police or prosecution,’ ” and therefore impliedly precludes restitution for lost wages when *not* testifying or otherwise assisting the prosecution. (*Crisler*, at p. 1508.) The court disagreed: “[I]n view of the clear

language that a victim is to be ‘fully reimburse[d] . . . for every determined economic loss’ (§ 1202.4, subd. (f)(3)), the express mention of one category of loss (lost wages due to time spent as a witness or in assisting law enforcement) does not preclude reimbursement for other economic losses. Trial-related expenses need not fall within any of the enumerated categories to qualify for reimbursement. [Citations.] [¶] Here, the parents took time away from work and incurred parking and mileage expenses as a result of attending the murder trial of the man who killed their son. These expenses readily qualify as ‘economic loss incurred as the result of the defendant’s criminal conduct’ since they would not have been incurred had defendant not murdered their son. (§ 1202.4, subd. (f)(3).) It is entirely reasonable that the parents of a murder victim will attend the murder trial in an attempt to gain some measure of closure and a sense that justice has been done.” (*Crisler*, at p. 1509.) As in *Brooks* and *Crisler*, section 1202.4’s express inclusion of “[a]ctual and reasonable attorney’s fees and other costs of collection” (§ 1202.4, subd. (f)(3)(H)) does not preclude attorney fees incurred for any purpose other than collection.

Appellant relies on *People v. Fulton* (2003) 109 Cal.App.4th 876, in which the victim retained an attorney for a personal injury case seeking economic and noneconomic damages against the defendant. (*Id.* at p. 879.) The victim subsequently obtained a restitution order for fees paid to his civil attorney. (*Ibid.*) The Court of Appeal agreed with the defendant’s contention that section 1202.4 does not authorize restitution for attorney fees incurred to collect *noneconomic* damages. (*Id.* at pp. 884–885.) The court reasoned: “the Legislature . . . made an express policy determination that noneconomic damages are not recoverable as restitution and therefore a victim will not be reimbursed for those losses. From this rule, it rationally follows that the Legislature did not perceive a need for a victim to recover attorney fees incurred to collect noneconomic damages in order for the victim to fully recover restitution under the statute. A contrary conclusion would mean that a victim who suffers only noneconomic loss would be entitled to recover as restitution all attorney fees incurred to recover that loss, but the same victim could not obtain restitution for any of the underlying noneconomic damages. Likewise,

under the Attorney General’s interpretation of the restitution statute, a victim who incurs only a small amount of economic damage but sustains substantial noneconomic damages would be potentially entitled to a large attorney fee award that has no meaningful relationship to the restitution for the underlying damages. We decline to interpret the statute in such an incongruous fashion.” (*Id.* at p. 884, fn. omitted.)

Fulton’s interpretation thus hinged on the statute’s general exclusion of restitution for noneconomic damages. (See *Giordano, supra*, 42 Cal.4th at p. 656 [“With the exception of restitution orders relating to felony convictions for lewd or lascivious acts [citation], for which noneconomic losses may be included in a direct restitution order, Penal Code section 1202.4 does not authorize direct restitution for noneconomic losses. (*Id.*, at subd. (f).) Apart from this categorical limitation, the Legislature has not further limited the types of economic loss that must be included in a restitution order.”].) We do not read *Fulton* to hold that restitution is precluded for attorney fees unless incurred to collect economic damages.

“ ‘[A] wrongdoer in criminal cases as in civil torts takes his victim as he finds him.’ ” (*People v. Taylor* (2011) 197 Cal.App.4th 757, 764.) In ordering restitution, the trial court found Bustamante “felt he needed to receive help and -- to recover what were his rights as a victim.” Bustamante paid an attorney to represent his interests as a victim in appellant’s criminal case; this economic loss was thus incurred as a result of appellant’s criminal conduct within the meaning of section 1202.4. (Cf. *People v. Moore* (2009) 177 Cal.App.4th 1229, 1233 [“[T]he [residential burglary] victim’s attendance at the pretrial and trial proceedings, and the costs associated with that attendance, were a direct result of defendant’s criminal behavior. That the victim’s attendance was not mandated by statute, that he was not required to address the court at those hearings, and that he chose to attend the proceedings of his own volition, do not relieve defendant from

the responsibility to compensate him for the loss attributable to defendant's criminal conduct."].)²

DISPOSITION

The order is affirmed.

² Appellant does not contend the reduced restitution award included attorney fees incurred in obtaining the restraining order against a friend of appellant's. We note that, when the attorney was estimating the number of hours spent helping the victim with appellant's case, the trial court requested she exclude time spent on the restraining order, suggesting the court did not include fees for this work in its restitution award.

SIMONS, J.

We concur.

JONES, P.J.

BURNS, J.

(A154840)